

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB-02-03]

Tobacco Inspection; Producer Referenda on Mandatory Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish procedures for referenda among producers of each kind of tobacco that is eligible for price support to determine whether they favor the mandatory grading of that kind of tobacco. Currently, tobacco that is not sold at auction is not subject to mandatory grading.

DATES: Written comments on this proposed rule must be received on or before (Insert date 10 days after date of publication in the Federal Register.)

ADDRESSES: Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), STOP 0280, 1400 Independence Avenue, SW, Washington, D.C. 20250-0280.

Comments will be available for public inspection at this location during regular business hours between 8:00 AM and 4:30 PM, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW, Washington, D.C. 20250-0280; telephone number (202) 205-0567.

SUPPLEMENTARY INFORMATION: Section 759 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for 2002 (Pub. L. 107-

76) (Appropriations Act) requires USDA to conduct referenda among producers of each kind of tobacco that is eligible for price support under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) to determine whether a majority of producers of a kind of tobacco voting in the referendum favor the mandatory grading of that kind of tobacco. The referenda should be conducted by March 31, 2002. If a majority of the producers voting in a referendum favor the mandatory grading of that kind, USDA is directed to ensure that the kind of tobacco is graded at the time of sale for the 2002 and subsequent marketing years. The USDA is also directed to establish user fees for any such inspections. To the maximum extent practicable, these fees would be established in the same manner as user fees for the grading of tobacco sold at auction authorized under the Tobacco Inspection Act (7 U.S.C. 511 et seq.). Regulations for tobacco inspection, including fees and charges, appear in Subpart B of 7 CFR part 29.

This proposed rule would establish procedures for conducting the producer referenda. Provisions are included for the method of conducting the referendum, eligibility for voting, a one vote limitation, form and distribution of ballots, filing and tabulation of ballots, and confidentiality. As provided for in the Appropriations Act, separate referenda would be conducted among the producers of each kind of tobacco eligible for price support. These kinds are flue-cured tobacco, types 11, 12, 13, 14; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; burley tobacco, type 31; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55, as set forth at 7 CFR § Part 1464.2.

Producers of each kind of tobacco would be eligible to vote in the referendum for that kind. Under USDA's price support program, periodic referenda are conducted among producers

of specific commodities, including tobacco, to determine whether they favor the continuation of quotas. Voting eligibility is governed by 7 CFR § 717.3. This proposed rule would to a great extent follow those provisions as they apply to tobacco producers and would determine eligibility to vote in the same or similar way. In general, the persons eligible to vote in a referendum for a particular kind of tobacco would be the farmers engaged in the production of the crop of such tobacco harvested in the immediately preceding crop-year prior to the holding of the referendum. This would include any person who is entitled to share in a crop of the commodity, or the proceeds thereof because he or she shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper, but would not include a landlord whose return from the crop is fixed regardless of the amount of the crop produced.

This rule proposes to administer the Appropriations Act requirements in accordance with USDA voting procedures with which the affected producers are familiar. The AMS Mandatory Grading Referenda program, producer eligibility, and procedural requirements will be governed by 7 CFR 717, Holding of Referenda, and the definitions contained in sections 718.2 and 723.104 of that same chapter which govern USDA, Farm Service Agency (FSA) referenda for tobacco producer quotas. This avoids development of redundant requirements, besides, quota holders are familiar with these procedures. A copy of these regulations, a referendum ballot, and voting procedures are available for review in any USDA Service Center.

Executive Order 12866 and 12988

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), consideration has been given to the potential economic impact upon small business. There are approximately 450,000 tobacco producers who would be eligible to vote in the referenda. Pursuant to criteria established under the Regulatory Flexibility Act, most of the tobacco producers would be considered small entities. This rule will not substantially affect tobacco growers. Voting in the referendum is voluntary. As discussed in the following section on the Paperwork Reduction Act, the public reporting burden is minimal, an estimated 5 minutes per response. Voting will be conducted by mail. The overall impact of this proposed rule should be minimal on tobacco growers because this rule provides for referenda procedures only and relies on, to a great extent, existing procedures. Accordingly, it has been determined that this rule will not have a significant economic impact on a substantial number of small entities.

A comment period of 10 days is provided for this proposed rule. This period of time is deemed appropriate because the regulations should be in place to conduct the referenda by

March 31, 2002, and also there should be sufficient time to make mailing lists to send ballots to producers eligible to vote.

Paperwork Reduction Act

The information collections proposed by this rule will be carried out using the referenda procedures of the Farm Service Agency and Form FSA MQ-5, Referendum Ballot. This rule will add no additional burden to that currently approved by OMB and assigned OMB Control Number 0560–0182 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

For the reasons set forth in the preamble, 7 CFR Part 29 is proposed to be amended as follows:

PART 29--TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for subpart B is revised to read as follows:

Authority: 7 U.S.C. 511m and 511r. Section 29.74a is also issued under sec. 759, Pub. L. 107-76, 15 Stat. 741 (7 U.S.C. 511s).

2. A new § 29.74a is added to read as follows:

§ 29.74a Producer Referenda on Mandatory Grading.

(a)(1) Method of conducting. Referenda shall be conducted among producers persons who were engaged in the production of the following types of tobacco harvested in the

immediately preceding crop year: flue-cured tobacco, types 11, 12, 13, 14; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; burley tobacco, type 31; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55. A referendum will be conducted for each kind of tobacco and the results will apply to each individual kind. A producer is eligible to vote in referenda for each kind of tobacco they produce.

(2) Farmers engaged in the production of tobacco. For purposes of the referenda, persons engaged in the production of tobacco includes any person who is entitled to share in a crop of the tobacco or the proceeds thereof because he or she shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper (a landlord whose return from the crop is fixed regardless of the amount of the crop produced is excluded) on a farm on which such crop is planted in a workmanlike manner for harvest: Provided, That any failure to harvest the crop because of conditions beyond the control of such person shall not affect his or her status as a person engaged in the production of the crop. In addition, persons engaged in the production of tobacco also includes each person who it is determined would have had an interest as a producer in the crop on a farm for which a farm allotment under the quota program (7 CFR Part 723, subpart B) for the crop was established and no acreage of the crop was planted but an acreage of the crop was regarded as planted for history acreage purposes under the applicable Farm Service Agency commodity regulations of the Department of Agriculture.

(3) One vote limitation. Each person eligible to vote in a particular referendum shall be entitled to only one vote in such referendum regardless of the number of farms in which

such person is interested or the number of communities, counties, or States in which farms are located in which farms such person is interested: Provided, That:

(i) The individual members of a partnership shall each be entitled to one vote, but the partnership as an entity shall not be entitled to vote;

(ii) An individual eligible voter shall be entitled to one vote even though he or she is interested in an entity (including but not limited to a corporation) which entity is also eligible to vote;

(iii) A person shall also be entitled to vote in each instance of his or her capacity as a fiduciary (including but not limited to a guardian, administrator, executor or trustee) if in such fiduciary capacity he or she is eligible to vote but the person for whom he or she acts as a fiduciary shall not be eligible to vote.

(4) Joint and family interest. Where several persons, such as members of a family, have participated or will participate in the production of tobacco under the same lease or cropping agreement, only the person or persons who signed the lease or agreement, or agreed to an oral lease or agreement, shall be eligible to vote. Where two or more persons have produced or will produce tobacco as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise eligible. The eligibility of one spouse does not affect the eligibility of the other spouse.

(5) Minors. A minor shall be entitled to one vote if he or she is otherwise eligible and is 18 years of age or older when he or she votes.

(6) Interpretation. In the case of tobacco on a farm where no acreage of tobacco is actually planted but an acreage of the commodity is regarded as planted under applicable

regulations of the Department of Agriculture, persons on the farm who it is determined would have had an interest in the commodity as a producer if an acreage of the commodity had been actually planted shall be eligible to vote in the referendum.

(b) Referenda Procedures. See part 717 of this chapter for eligibility criteria and the procedures to be used in carrying out mandatory grading referenda. Where not inconsistent with this part, the definitions contained in parts 717, 718 and 723 will govern administration of these referenda. A copy of these regulations, a referendum ballot, and voting procedures are available for review in any USDA Service Center.

DATED: January 28, 2002

/s/ A. J. Yates
A. J. Yates
Administrator
Agricultural Marketing Service